In The
Supreme Court of the United States

OCTOBER 1955 TERM.

No. 409

W. H. WILSON, executor of the Estate of Birdine Fletcher, deceased, and SISTERS OF ST. FRANCIS, a corporation,

Petitioners,

VERSUS

A. J. SIMLER,

Respondent.

BRIEF OF RESPONDENT ON PETITION FOR WRIT OF CERTIORARI

These same petitioners applied to this Court for certiorari in this case No. 677 October term 1953 and certiorari was denied April 26, 1954 in 347 U. S. 954. A Petition for Rehearing and Motion to Stay proceedings were then filed by them and denied May 24, 1954, 347 U. S. 973. They applied for certiorari to this Court

a second time in case 510 October Term 1954, which was denied January 31, 1955, 348 U. S. 929, 99 L. Ed. 246.

These three cases were brought by respondent to enforce the Judgment of the trial court entered on June 14, 1954, in Case No. 5619 pursuant to Mandate of the Circuit Court of Appeals (*Simler* v. *Wilson et al.*, 210 F. 2d 99), adjudging that the attempted Devise of Birdine Fletcher, Deceased, in her Last Will and Testament, admitted to probate in the County Court of Oklahoma County, Oklahoma, to Sisters of St. Francis, a corporation, is void and no title to said real estate vested in said corporation, but title to said land vested in respondent, A. J. Simler, as sole and only heir of Birdine Fletcher, deceased, immediately upon her death on July 13, 1952, under the laws of descent in Oklahoma.

The farm with the runs from July 13, 1952, was distributed by the County Court on November 30, 1954, to A. J. Simler (See pages 9-18 of Transcript of Record in Circuit Court of Appeals), and A. J. Simler was thereby given possession of the farm.

Now after these three judgments were entered in the District Court on the mandate of the Circuit Court of Appeals (See Appendix 1, 2 and 3, this brief), and the judgment was paid and satisfied by the executor W. H. Wilson in the amount of $13,585.12 (See Appendix 4, this brief), and by Phillips Petroleum Company in the amount against it, the executor and the Sisters attempt to

obtain certiorari to the Circuit Court of Appeals on its judgment after the judgment rendered thereon against the executor is paid and satisfied by him in the District Court.

In the original case, the executor and Sisters filed a Motion to Dismiss the complaint in the District Court (pp. 8-20, Print of Record in No. 677, October Term 1953), in which they admitted every allegation of fact alleged in the complaint (pp. 2-7, Print of Record in No. 677, October Term 1953), and attached thereto the charter of the corporation showing the purposes and objects for which it was formed, and supported the motion to dismiss by an affidavit of their attorney *"for the purpose of showing that there is in this action no genuine issue as to any material fact"*. (See Appendix 1, Brief of Respondent, No. 510, October Term 1954).

Thus, the Court of Appeals had before it on the first appeal (*Simler* v. *Wilson et al.*, 210 F. 2d 99), a well defined issue of law as to whether the corporation *"whose objects and purposes are to found and maintain a religious, benevolent order; and establish, conduct and maintain convents, hospitals and schools of nursing in connection with such hospitals"* and which operates two hospitals, one in Oklahoma City and one in Maryville, Missouri and a convent there, is authorized to take under the Constitution and statutory provisions of Oklahoma, an oil producing farm nine miles out in the country from

Anadarko, Oklahoma, and over 81 miles to its nearest establishment.

The executor and Sisters filed a Petition for Rehearing (pp. 38-41, Print of Record in No. 677, October Term, 1953), in the Court of Appeals after the judgment and opinion on the first appeal (*Simler* v. *Wilson et al.*, 210 F. 2d 99), which, among others, they asserted that the opinion was erroneous and wrong because the court failed to give consideration to the exception in the prohibition of the Oklahoma Constitution which permits a corporation to take, acquire, hold or own real estate outside of cities and towns or additions thereto "if it is reasonably necessary and proper for carrying on the business for which the corporation was chartered or licensed. This exception involves a question of fact to be determined upon a trial of the issue."

On June 14, 1954, the District Court entered judgment (p. 24B, Petitioners' Petition for Writ of Certiorari), based upon the opinion, judgment and mandate of the Court of Appeals on the first appeal (*Simler* v. *Wilson et al.*, 210 F. 2d 99).

The Appeal by the executor and Sisters from this judgment was dismissed by the Court of Appeals on October 12, 1954 (p. xx, Petitioners' Petition for a Writ of Certiorari, case 510), for the obvious reason that the judgment appealed from had been entered in conformity

to the mandate of the Court of Appeals on the first appeal, and the second appeal was without merit.

At the hearing on distribution of the estate in the county court, the only testimony offered by the Sisters was that the corporation would use the income from the oil producing farm to help maintain existing or added facilities to its hospitals and convents (p. xii, Appendix A., Petitioners' Petition for a Writ of Certiorari, case ~~677~~), and the county court found and held that the real estate was not necessary or proper for which the corporation was formed, and Simler is entitled to the farm and the oil runs (p. xliv, Appendix A., Petitioners' Petition for a Writ of Certiorari Case ~~677~~ 510).

The executor did not appeal from judgment of the county court distributing the farm to Simler. The Sisters appealed and dismissed their appeal. The issue as to him and it are closed. Clearly, the executor has no interest in the subject-matter of this litigation which entitled him to petition for certiorari, since, in his official capacity his only duty is to distribute the property to the persons found entitled thereto. *In re: Lee's Estate*, 206 Okl. 275, 243 P. 2d 1013; *Love* v. *Wilson*, 181 Okl. 558, 75 P. 2d 876.

The case of *Markham, Alien Property Custodian* v. *Allen*, 326 U. S. 490, 66 S. Ct. 296, 90 L. Ed. 256, seems to be conclusive on the right of the court to render the judgment in this case.

An executor and the corporation cannot defeat a Federal Court judgment in favor of an heir by claiming another court has jurisdiction of the property.

The law seems to be that expressed in *Wells* v. *Helms* (10 Cir., 1939), 105 F. 2d 402, 404, in which it was held:

> "It is well settled that where two actions involving the same cause of action are pending in a State and Federal Court and are within the concurrent jurisdiction of each both actions in so far as they seek relief in *personam* may proceed at the same time and when one action has gone to judgment, that judgment may be set up in the other action as *res judicata.*"

In the same case the Court held:

> "A distributee of an estate, citizen of another state, may establish his right to share in such estate and enforce such adjudication against the administrator personally or his sureties or against any other person liable therefor, or proceed in any way which does not disturb the actual possession of the property by the State Court."

So it seems clear where the property (farm), has been distributed the Federal Court, in order to make effective and to prevent the impairment of its judgment, may render a judgment thereon and enjoin parties from attempting to frustrate or nullify that judgment by other proceedings.

The Federal Court has power to enforce its adjudication. *Braun* v. *Mann*, 151 F. 145, 149.

The Circuit Court directed the District Court to enter a permanent injunction against the Sisters and its attorneys, and all persons or corporations claiming for, by, through or under it, from directly or indirectly claiming any right, title, lien or interest in and to the farm or the runs since July 13, 1952. (See 7B, Petitioners' Brief for Certiorari). A permanent injunction was so issued by the District Court (see Appendix 1, of this brief). The petitioners still claim and continue to litigate this respondent.

In *Berman* v. *Denver Tramway Corporation* (10 Cir., 1952), 197 F. 2d 946, 950, it was held:

> "A Federal Court is clothed with power to secure and preserve to parties the fruits and advantages of its judgment or decree. In the appropriate exercise of that power, the court has jurisdiction through means of a supplemental proceeding to enjoin the re-litigation in the state court of a matter litigated, determined and adjudicated by its valid decree regularly entered if the result of that re-litigation would be to destroy the effect of the decree rendered in the United States Court."

In *Fetzer* v. *Johnson* (Okl.), 15 F. 2d 145, 153, Certiorari Denied, 273 U. S. 749, 71 L. Ed. 873, it was said:

> "A Federal Court of equity will, by its writ of injunction, deprive one 'of the benefit of a judgment obtained in a state court in circumstances where its enforcement will be contrary to recognize principles, of equity and the standards of good conscience' (*Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183, 41 S. Ct. 93, 96, 65 L. Ed. 205)."

In *Jackson* v. *Carter Oil Co.*, 179 F. 2d 524, the court held that the Federal Court has power to prevent re-litigation and could enjoin and prevent same.

By the petitioners' reference to the memorandum opinion of the District Court March 10, 1955 (9-13b, their brief), and Injunction (14B), which were reversed by the Circuit Court, and the Opinion (pages 21b-23b), and the judgment denying the injunction on June, 1954 (page 24b), they again try to present a new argument on a matter which was reversed by the Circuit Court. They claim the Federal Court was trying to interfere with the possession of the property by the Probate Court. This matter was before this Court on prior petitions for certiorari and denied.

The judgment in *Simler* v. *Wilson*, 210 F. 2d 99, was entered on November 9, 1953. Certiorari was twice denied by this Court at the October, 1953 term, 347 U. S. 954, and October, 1954 term, 348 U. S. 929. Judgment was entered on the Mandate of the Court of Appeals on June 14, 1954. The distribution of the farm and runs was made by the County Court of Oklahoma County on November 30, 1954, in which Distribution Order the Court said in part (Transcript of Record, Circuit Court, Page 15):

> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said Estate remaining on hand should be and is hereby distributed as follows:

"TO A. J. SIMLER, the following described real property:

"Northwest Quarter of Section 34, Township o North, Range 10 West, in Caddo County, Oklahoma * * *",

so when the judgments were entered by the Circuit Court of Appeals on June 27, 1955, and by the District Court on July 18, 1955 (Appendix 1, 2, 3 and 4, this brief), the farm and runs had been distributed by the County Court. The County Court has no control of said property on said distribution thereof to A. J. Simler.

Most of the cases cited by petitioners were argued either in the prior petitions or in the petition for rehearing or motions to stay. The four new cases cited in their present petition have no factual bearing and the issues of the law are different from the Simler case.

The Federal Court is not interfering with the probate of an estate when the estate has been probated and distributed, such as in this case. The distribution was made on November 30, 1954. The judgment was entered on June 27, 1955 and July 18, 1955 between these parties. The money judgment against the executor was paid (Appendix 5).

In Oklahoma the Probate Court has limited authority. In *Taliaferro* v. *Reirdon* (1940), 186 Okl. 603, 99 P. 2d 522, it was held:

"Probate Courts have no authority under the probate procedure to adjudicate title to property, or to compel its return."

We respectfully submit that no control can be had or exercised over an estate that is distributed, nor appeal from a judgment that is paid. Such judgments could not be interference with or controlling the estate or marshalling the assets as claimed.

They not only seek certiorari in this Court to the Circuit Court of Appeals, but they are again attempting to appeal each of the three judgments (Appendix 1, 2, 3 and 4), in each of the three cases rendered by the District Court on July 18, 1955 back to the Circuit Court of Appeals, in face of a prior dismissal of such appeals by the Circuit Court on October 12, 1954.

This *Simler case* has been in the Federal District Court and the Circuit Court of Appeals many times, and this makes the third time petitioners have sought certiorari in this Court, in addition to petitions for rehearings and motions to stay. The injunction issued against claimants by the District Court is permanent.

Since there is no special or important reason shown in the petition for granting of a writ of certiorari, as required by Rule 19 of this Court, and since the injunction exists, and two other petitions have been denied, it is submitted that this is an appropriate case for this Court to adjudge to respondent his reasonable damages for this delay under Rule 56 (4), of this Court.

Respectfully submitted,

LESLIE L. CONNER,
Hightower Building,
Oklahoma City, Oklahoma,
Counsel for Respondent.

CHARLES W. CONNER,
Hightower Building,
Oklahoma City, Oklahoma;

ARNOLD B. BRITTON,
Hightower Building,
Oklahoma City, Oklahoma;

PHIL E. DAUGHERTY,
First National Bldg.,
Oklahoma City, Oklahoma,
Attorneys for Respondent.

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